

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:BR5

PLR-150718-07

Date:

February 11, 2008

LEGEND:

Authority =

State =

City =

Port =

Coal Terminal =

Company =

Bonds =

Date 1 =

Date 2 =

Date 3 =

Area A =

Area B =

Parcel A =

Parcel B =

a =

Dear :

This is in response to your request for a ruling that the use of bond proceeds as described below will be an insubstantial deviation for purposes of the public notice and approval requirements set forth in § 147(f) of the Internal Revenue Code (the “Code”) and § 5f.103-2 of the temporary Income Tax Regulations.

Facts and Representations

You make the following factual representations. Authority is a political subdivision and separate agency of State created under State law for the purpose of developing, constructing, maintaining, and operating all of the harbors and seaports within State. The great majority of Authority’s property and operations are located within or around City and comprise an integral part of the port of City (the “Port”).

Authority operates a wide variety of different facilities within Port, including facilities for bulk cargo, container cargo, coal, timber products, and specialty products, as well as a terminal railroad. Authorities properties and facilities in and around City are located in multiple locations in two areas: Area A and Area B.

On Date 1, in compliance with the public notice requirements of § 147(f), Authority published a public notice (the “Notice”) in newspapers of general circulation covering State and the localities in which the projects described in such Notice were to be located. The Notice provides the place, date, and time of the public hearing relating to the proposed issuance of the Bonds, which were issued as exempt facility bonds on Date 2. The Notice also sets forth the maximum aggregate principal amount of the Bonds and indicates that the proceeds of the Bonds will be used to, in part, finance improvements to the Coal Terminal, and acquire parcels of land for future expansion of Port facilities.

Prior to and at the time of issuance of the Bonds, Authority expected to acquire two parcels of land, one located in Area A ("Parcel A"), and the other located in Area B ("Parcel B"). Both parcels were then being offered for sale by private owners and were identified by Authority as providing useful expansion sites, without any certain use having been identified. The Notice describes and identifies these two parcels of land as the parcels that will be financed with the proceeds of the Bonds. Both parcels are large sites previously used for maritime operations. Neither parcel has an assigned street address and therefore no street address was included in the Notice for either parcel.

The Notice also states in part that "all of the facilities and improvements to be financed with the proceeds of the Bonds are to be located in or near Authority's existing port facilities, including those located [in Area A]. . ."

After the Bonds had been issued, Company expressed interest in locating a significant economic development project (the "Project") to be constructed and operated by Company along the same river as Parcel A and Parcel B which would result in significant shipments of materials and finished products through Port. In order to induce Company to construct the Project, on Date 3 (approximately six months after the date the Bonds were issued) Authority delivered a letter to Company committing Authority to enter into a cargo handling agreement requiring it to acquire, construct, and operate a facility (the "Terminal Facility") for the offloading of steel slabs at Port for barge transport to the Project. The letter agreement includes a statement that Authority will provide a suitable site for the Terminal Facility and identified Parcel A as the site for the Terminal Facility.

Although proceeds of the Bonds will not be spent to construct the Terminal Facility, Authority does expect to issue bonds to finance the construction of the Terminal Facility. However, financing both the costs to prepare Parcel A and to construct the Terminal Facility will burden Authority with more debt than it believes is practical or appropriate. In order to minimize the total additional debt required to construct the Terminal Facility, Authority has determined that it must forego the opportunity to purchase Parcel B. Authority thus will not spend the remaining unspent proceeds of the Bonds to purchase Parcel B. Instead, it will spend the remaining unspent Bond proceeds in the amount of not more than \$a on certain site improvement costs to include specifically demolition of existing marine and land-based improvements, environmental remediation, landfill, a bulkhead, and infrastructure. All of these site improvement costs (the "Parcel A Improvements") will be located on, or in the case of the bulkhead, around, Parcel A in anticipation of locating the Terminal Facility thereon. The Parcel A Improvements will also be located across a river from the Coal Terminal where improvements identified in the Notice and financed with the proceeds of the Bonds are being made, and less than one-half mile from certain other improvements identified in the Notice and financed with the proceeds of the Bonds. The Parcel A Improvements will further maritime operations for Authority, which are in keeping with the surrounding area.

Because construction of the Terminal Facility was not contemplated at the time the Bonds were issued, the Parcel A Improvements were not identified in the Notice. Authority's determination to make the Parcel A improvements and construct the Terminal Facility was not made until after the Bonds were issued and Authority and Company did not enter into the agreement requiring construction of the Terminal Facility until approximately six months after the Bonds were issued.

Law and Analysis

Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any State or local bond. Section 103(b) provides, in part, that § 103(a) shall not apply to any private activity bond that is not a qualified bond within the meaning of § 141. Section 141(e)(1)(A) provides that the term "qualified bond" means any private activity bond that is an exempt facility bond.

Section 147(f) provides that a private activity bond is not a qualified bond unless it is part of an issue that has been approved by the governmental unit that issued the bond or by the governmental unit on whose behalf the bond was issued. Section 147(f)(2)(B) treats an issue as having been approved by a governmental unit if the issue is approved by "the applicable elected representative of the governmental unit after a public hearing following reasonable public notice."

Under Section 5f.103-2(f)(2), a facility is within the scope of an approval if the notice of public hearing and the approval contain all of the following: (i) a general functional description of the type and use of the facility to be financed; (ii) the maximum aggregate face amount of obligations to be issued with respect to the facility; (iii) the initial owner, operator, or manager of the facility; and (iv) the prospective location of the facility by its street address or, if none, by a general description designed to inform readers of its specific location. The term "facility" as defined in § 5f.103-2(f)(4) includes a tract or adjoining tracts of land, improvements thereon and any personal property used in connection with such real property. Separate tracts of land (including improvements and connected personal property) may be treated as one facility only if they are used in an integrated operation.

An approval is valid under § 5f.103-2(f) for any issue used to provide publicly approved facilities, notwithstanding insubstantial deviations with respect to the maximum aggregate face amount of the bonds issued under the approval for the facility, the name of its initial owner, manager, or operator, or the type or location of the facility from that described in the approval. An approval or notice of public hearing is not adequate if any of the items in § 5f.103-2(f)(2)(i) through (iv), with respect to the facility to be financed, are unknown on the date of the public notice or the date of the approval.

Section 5f.103-2(g)(2) provides that a public hearing is a "forum providing a reasonable opportunity for interested individuals to express their views, both orally and in writing, on

the proposed issue of bonds and the location and nature of a proposed facility to be financed.” Section 5f.103-2(g)(3) further provides that the public notice must be “reasonably designed to inform residents of the affected governmental units, including residents of the issuing unit and the governmental unit where a facility is to be located, of the proposed issue.” The notice must state the time and date for the hearing and contain the information contained in § 5f.103-2(f)(2). Notice is presumed to be reasonable, pursuant to § 5f.103-2(g)(3), if it is published no fewer than 14 days before the scheduled hearing.

The purpose of the public notice and approval requirements of § 147(f) is to ensure that the affected members of the general public will be notified of a pending bond issue and made aware of the intended use of proceeds in order to elicit comments that will ensure a substantial public benefit from issuing the bonds. In this case, the Notice states that Bond proceeds will be spent on acquiring Parcel A, which is the location of the Parcel A Improvements. The Notice further provides a general description of the location where the Bond proceeds will be spent, stating that “all of the facilities and improvements to be financed with the proceeds of the Bonds are to be located in or near Authority’s existing port facilities, including those located [in Area A]. . .” This general description also includes the location of the Parcel A Improvements, since Parcel A is located within Area A. The Parcel A Improvements will also be located across a river from the Coal Terminal where improvements identified in the Notice and financed with the proceeds of the Bonds are being made, and less than one-half mile from certain other improvements identified in the Notice and financed with the proceeds of the Bonds. The Parcel A Improvements are being made for the purpose of furthering Authority’s maritime operations, which is in keeping with the nature, function, and character of the uses of the Bond proceeds described in the Notice.

While the use of Bond proceeds to make the Parcel A Improvements was not expected or foreseen at the time the Bonds were issued, the Notice did not fail to put the public in the affected area on notice as to Authority’s intention to use the Bond proceeds to finance projects that will further its maritime operations at Port and in the vicinity of the location of the Parcel A Improvements. Thus, the Notice published originally in newspapers of general circulation covering State and the affected localities provided the general public in those localities with all of the pertinent information regarding the Parcel A Improvements as required by § 147(f) and § 5f.103-2(f).

Conclusion

Based on the factual representations set forth above, we conclude that the proposed use of Bond proceeds to further Authority’s maritime operations at Port by making the Parcel A Improvements constitutes an insubstantial deviation from the uses of the Bond proceeds described in the Notice, and will not cause the Bonds to fail to meet the public notice and approval requirements of § 147(f) and § 5f.103-2(f).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to Authority's authorized representative.

The ruling contained in this letter is based upon information and representations submitted by Authority and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,

Assistant Chief Counsel
(Financial Institutions and Products)

By: _____
Timothy L. Jones
Senior Counsel, Branch 5